

Conwest Roofing and its insurance carrier, Workers Compensation Fund (referred to jointly as “Conwest”), and Employers’ Reinsurance Fund (“ERF”) ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to L. H. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On September 30, 2003, Mr. H. filed with the Commission two applications for workers’ compensation benefits. The first application claimed benefits for back injury, broken leg, depression, concussion and post-traumatic stress disorder allegedly caused by Mr. H.’s fall from a roof while working for Conwest on October 13, 1992. The second application claimed benefits for low back injury allegedly caused by Mr. H.’s work for American Stone on January 28, 1999.

Judge Marlowe held an evidentiary hearing on Mr. H.’s claims on November 17, 2004, and then on May 26, 2005, issued her decision. Judge Marlowe concluded that Mr. H.’s accident at Conwest during October 1992 medically caused the injuries listed in Mr. H.’s first application and that Mr. H. was entitled to a tentative finding of permanent total disability based on those injuries. Judge Marlowe ordered Conwest to pay the cost of medical treatment for those injuries and referred Mr. H. to the Utah State Office of Rehabilitation for “rehabilitation training.” Judge Marlowe ordered ERF to pay “up to \$3,000” for that training.

Regarding Mr. H.’s second application, Judge Marlowe concluded that the alleged accident at American Stone during January 1999 did not cause any additional injury. Judge Marlowe therefore dismissed Mr. H.’s claim against American Stone and its insurance carrier, Transportation Insurance.

As already noted, both ERF and Conwest have asked the Commission to review Judge Marlowe’s decision. Both ERF and Conwest argue that a medical panel should be appointed to evaluate the causes of Mr. H.’s current medical problems.

DISCUSSION

It is undisputed that Mr. H. suffered serious back and leg injuries while working at Conwest during October 1992. After his accident, Mr. H. underwent surgery and a long period of recuperation. Then, over the next several years, he was involved in several other work and non-work accidents. Approximately eight years after his accident at Conwest, Mr. H. was diagnosed with post-traumatic stress disorder. The Social Security Administration concluded that Mr. H. was totally disabled as of June 3, 2000, as a result of depression, post-traumatic stress disorder and degenerative disc disease.

In light of the history summarized above, the central issue in resolving Mr. H.'s claim is whether his accident at Conwest in 1992 caused his depression and post-traumatic stress disorder. It appears that Judge Marlowe relied on Dr. Mejia's report to conclude that such a causal connection does exist.¹ However, the Commission views Dr. Mejia's report as inconclusive. In particular, while Dr. Mejia does diagnose Mr. H. as suffering from post-traumatic stress disorder, it is not clear that Dr. Mejia attributes that disorder to the accident at Conwest.

The existence or non-existence of a medical causal connection between Mr. H.'s accident at Conwest and his subsequent medical problems is of critical importance to Mr. H.'s right to receive workers' compensation benefits. In light of Mr. H.'s complicated medical history and the lack of any clear opinion on that point in the existing medical record, the Commission remands this matter to Judge Marlowe with instructions to refer the medical aspects of Mr. H.'s claim to an impartial medical panel. Judge Marlowe may also take any additional action necessary to adjudicate Mr. H.'s claims. Judge Marlowe will then issue a new decision that states her findings of fact and explains the application of the Workers' Compensation Act to those facts. Any party dissatisfied with Judge Marlowe's decision may seek further review by the Commission or Appeals Board.

ORDER

The Commission grants the motions for review of Conwest and ERF and remands this matter to Judge Marlowe for further proceedings consistent with this decision. It is so ordered.

Dated this 28th day of February, 2006.

R. Lee Ellertson
Utah Labor Commissioner

¹ Although Judge Marlowe describes the various medical events and opinions in this matter, she has not explicitly stated the facts she finds to be true or discussed the significance of such facts under the Workers' Compensation Act.